

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Petters Company, Inc., et al.,

Debtors.

(includes:  
Petters Group Worldwide, LLC;  
PC Funding, LLC;  
Thousand Lakes, LLC;  
SPF Funding, LLC;  
PL Ltd., Inc.;  
Edge One LLC;  
MGC Finance, Inc.;  
PAC Funding, LLC;  
Palm Beach Finance Holdings, Inc.)

**Jointly Administered under  
Case No. 08-45257**

Court File No. 08-45257

Court Files Nos.:  
08-45258 (GFK)  
08-45326 (GFK)  
08-45327 (GFK)  
08-45328 (GFK)  
08-45329 (GFK)  
08-45330 (GFK)  
08-45331 (GFK)  
08-45371 (GFK)  
08-45392 (GFK)

Chapter 11 Cases  
Judge Gregory F. Kishel

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Douglas A. Kelley, in his capacity as the  
court-appointed Chapter 11 Trustee of  
Debtor Petters Company, Inc., et al.

Plaintiff,

v.

Adv. Case Nos.:

Vlahos, et al.;	10-04201
Redstone Limited Partnership;	10-04202
Redstone American Grill, Inc.;	10-04203
Edgebrook, Inc.;	10-04204
Aron;	10-04205
Kanios, et al.;	10-04206
Hagan;	10-04207
Lynn Isaac, et al.;	10-04209
George Isaac, et al.;	10-04210
Papadimos;	10-04211
Svigos;	10-04212
Kenney;	10-04225
High Plains Investment LLC;	10-04250
Hauser;	10-04254

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Hayden Fleming, et al.;	10-04255
Miller, et al.;	10-04256
Patrick Fleming, et al.;	10-04257
McCarthy, et al.;	10-04262
Allanson;	10-04263
Brennan;	10-04264
Kenneth Colvin, et al.;	10-04266
Electric Motor Supply Co.;	10-04267
Steve Feneis;	10-04268
Kabe;	10-04273
Caruso;	10-04274
Dan G. Feneis, et al.;	10-04275
Kuperus;	10-04277
Kyriakides;	10-04278
Jane Slobodyanuk;	10-04280
Slava Slobodyanuk;	10-04281
Miller Companies, Inc.;	10-04282
Kerbel, et al.;	10-04284
Challenge Printing;	10-04290
Overstock.com;	10-04292
Alper;	10-04293
Mansour, et al.;	10-04296
Opportunity Finance, LLC, et al.;	10-04301
Larry Colvin, et al.;	10-04310
Kimberlee Colvin, et al.;	10-04311
Metro I, LLC, et al.;	10-04328
Carter;	10-04337
Engels;	10-04338
Danko;	10-04339
McGaunn;	10-04340
Salmen;	10-04341
Phelps;	10-04342
Miller;	10-04343
Anderson;	10-04344
Ting;	10-04345
Riedl;	10-04346
Mau;	10-04347
Margolis;	10-04348
Metro Gem, Inc., et al.;	10-04352
Thomas Shimoji and Company, Ltd.;	10-04354
Circle F Ventures, LLC;	10-04355
Joe;	10-04358
Tesar;	10-04359
Dorsey;	10-04360
O'Brien;	10-04361
Honig;	10-04362

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Sarenpa;	10-04363
Pernula;	10-04366
Schmit;	10-04367
Opportunity Finance, LLC;	10-04375
Toshi Investments, Ltd.;	10-04378
Idlewild Properties, LLC;	10-04380
Knoblach, et al.;	10-04382
Wright;	10-04385
Schopper;	10-04391
Monighan;	10-04395
Westford Special Situations Master Fund, L.P., et al.;	10-04396
Zhang;	10-04402
Lagermeier;	10-04403
Clayton;	10-04405
Hardy;	10-04408
Ratliff;	10-04409
Dunlap;	10-04410
Morgan;	10-04415
General Electric Capital Corporation;	10-04418
Romenesko;	10-04419
Associated Bank;	10-04422
Kenneth Johnson;	10-04423
Hodge;	10-04425
Lancer Financial Services, LLC, et al.;	10-04427
Cohen Partnership, et al.; and	10-04431
Ritchie Capital Management, L.L.C., et al.,	10-04440

Defendants.

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**ERRATA AMENDMENT TO SECTION II.B.1.(a) OF OMNIBUS MEMORANDUM OF  
LAW IN OPPOSITION TO DEFENDANTS’ MOTIONS TO DISMISS**

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Douglas A. Kelley, Trustee of the above-captioned debtors hereby submits this errata amendment to Section II.B.1.(a) of the *Omnibus Memorandum of Law in Opposition to Defendants’ Motions to Dismiss* (the “Omnibus Brief”).

The citation to *McDaniel v. United Hardware Distrib. Co.*, which is cited in II.B.1.(a) and elsewhere, inadvertently cited to the year 1996, and it should have been 1991.

In addition, a portion of a paragraph of Section II.B.1.(a) of the Omnibus Brief was mistakenly deleted in the editing process. Section II.B.1.(a) beginning on page 22 should read as follows (a compare version of this section is attached as Exhibit A for the Court's ready reference):

**II. The Trustee's Fraudulent Transfer Claims Are Timely and the Trustee Is Authorized to Pursue Recovery of Fraudulent Transfers Made Throughout the Duration of the Petters Ponzi Scheme.**

**B. The Controlling Limitations Period Is Minnesota Statutes § 541.05, Subd. 1(6).**

**1. The Minnesota Uniform Fraudulent Transfer Act Is a Codification of Minnesota Common Law, Rendering Minnesota Statutes § 541.05, Subd. 1(2) Inapplicable.**

**(a) Minnesota Statutes § 541.05, Subd. 1(2) Applies to Liability that Would Not Exist but for a Statute.**

The Minnesota Supreme Court has held that subdivision 1(2) was not intended by the legislature to cover statutory causes of action if the statute is merely a codification of preexisting common law. *McDaniel v. United Hardware Distrib. Co.*, 469 N.W.2d 84, 85-86 (Minn. 1991). That is precisely what MUFTA is—a codification of common law, rendering subdivision 1(2) inapplicable.

In *McDaniel*, the Minnesota Supreme Court analyzed a cause of action to determine the appropriate statute of limitations to apply to the claim. *Id.* The court held that Minnesota Statutes § 541.05, subd. 1(2) does *not* apply to “liabilities existing at common law which have been recognized by statute.” *Id.* at 85. Finding that the subject cause of action was not a codification of the common law, but was created by statute, the court held that the limitations period in Minnesota Statutes § 541.05, subd. 1(2) applied to the claim. *Id.* at 85-86. *See Manteuffel v. City of N. St. Paul*, 570 N.W.2d 807, 812 (Minn. Ct. App. 1997) (applying

*McDaniel* test); *Snesrud v. Instant Web, Inc.*, 484 N.W.2d 423, 427 (Minn. Ct. App. 1992) (same).

*McDaniel* therefore requires an analysis of the origin of a cause of action to determine whether the general limitations period in Minnesota Statutes § 541.05, subd. 1(2), applies. In establishing the test in *McDaniel*, the Minnesota Supreme Court relied on the New York Court of Appeals' decision in *Aetna Life & Casualty Co. v. Nelson*, 67 N.Y.2d 169 (1986). In *Aetna*, the New York Court of Appeals considered the applicability of the New York counterpart to Minnesota Statutes § 541.05, subd. 1(2), the limitations period pertaining to liability created by statute. The Court stated, "we have consistently held the statute . . . only governs liability which would not exist but for a statute. It does not apply to liabilities existing at common law which have been recognized or implemented by statute. Thus, if the [statute] merely codifies or implements an existing liability, the [limitations period applicable to liability created by statute] would be inapplicable." *Id.* at 174 (citations omitted). The Second Circuit Court of Appeals applied the *Aetna* test to a claim under New York's fraudulent conveyance statute in *Orr v. Kinderhill Corp.*, 991 F.2d 31, 34-35 (2d Cir. 1993). The question in *Orr* was whether the New York three-year limitations period applicable to actions on liability created by statute applied to the fraudulent conveyance claim. The court held the statutory liability limitations period did not apply to the claim. The limitations period

'does not apply to liabilities existing at common law which have been recognized or implemented by statute.' Rather, [the limitations period] applies only when a statute creates a new liability that did not exist at common law and would not exist but for the statute. Moreover, 'the statute must be essential to the cause of action [and] . . . the statutory liability must truly be new.' That the statute merely enlarges the common law scheme of liability or grants additional remedies is insufficient to bring it within [the limitations period].

*Id.* at 34 (citations omitted). Noting that fraudulent conveyance actions were common in New York long before the state's fraudulent conveyance statute was enacted, the court concluded the limitations period applicable to liability created by statute did not apply to the claim. Rather, the Court held New York's six-year limitations period applied. *Id.* at 36.

DATED: June 13, 2011

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DATED: June 13, 2011

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# EXHIBIT A

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New York Court of Appeals considered the applicability of the New York counterpart to Minnesota Statutes § 541.05, subd. 1(2), the limitations period pertaining to liability created by statute. The Court stated, “we have consistently held the statute . . . only governs liability which would not exist but for a statute. It does not apply to liabilities existing at common law which have been recognized or implemented by statute. Thus, if the [statute] merely codifies or implements an existing liability, the [limitations period applicable to liability created by statute] would be inapplicable.” *Id.* At 174 (citations omitted). The Second Circuit Court of Appeals ~~case that~~ applied ~~a similar analysis~~ the Aetna test to a claim under New York’s fraudulent conveyance statute in *Orr v. Kinderhill Corp.*, 991 F.2d 31, 34-35 (2d Cir. 1993). The question in *Orr* was whether the New York three-year limitations period applicable to actions on liability created by statute applied to the fraudulent conveyance claim. The court held the statutory liability limitations period did not apply to the claim. The limitations period

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*Id.* at ~~36~~34 (citations omitted). Noting that fraudulent conveyance actions were common in New York long before the state’s fraudulent conveyance statute was enacted, the court concluded the limitations period applicable to liability created by statute did not apply to the claim. Rather, the Court held New York’s six-year limitations period applied. *Id.* at 36.